AMENDED IN ASSEMBLY SEPTEMBER 12, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1301

Introduced by Assembly Member Gaines

February 23, 2007

An act to amend Section 3516 of, and to repeal Section 763 of, the Financial Code, relating to financial institutions. An act to amend Sections 113, 118, 250, 277, 1232, 1761, 1900, 1912, 1913, 1913.5, and 3516 of, to amend the heading of Chapter 6 (commencing with Section 750) of Division 1 of, to add Sections 218, 219, 364, 760, 767, 1239, 1240, 1330, 1331, 1332, 1592, 1593, and 1911.5 to, to add a heading as Article 1 (commencing with Section 750) to, to add Article 2 (commencing with Section 780) and Article 3 (commencing with Section 790) to, Chapter 6 of Division 1 of, to add Article 1.5 (commencing with Section 1210) to Chapter 10 of Division 1 of, to add Chapter 4 (commencing with Section 500) to, Chapter 4.5 (commencing with Section 550) to, and Chapter 18 (commencing with Section 3350) to, Division 1 of, to repeal Sections 751.7, 760.1, 761.5, 769, 771, 772, 773, 774, 775, 775.1, 776, 777, 777.5, 778, 779, 782, 1335, and 1336 of, to repeal Article 5 (commencing with Section 419) of Chapter 3 of Division 1 of, to repeal Chapter 4 (commencing with Section 490) and Chapter 18 (commencing with Section 3350) of Division 1 of, and to repeal and add Sections 752, 753, 754, 755, 756, 758, 759, 761, 762, 763, 764, 765, 766, and 768 of, the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1301, as amended, Gaines. Financial institutions: deposits. institutions.

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(1) Existing law, the Banking Law, provides for the licensure and regulation by the Commissioner of Financial Institutions of various financial institutions, including banks, commercial banks, and trust companies.

This bill would revise and recast various provisions applicable to these financial institutions, including, among others, provisions relating to the location of bank offices and to the powers, prohibited practices, and penalties applicable to banks. The bill would authorize the commissioner to adopt and implement methods of accepting electronic filings of applications, reports, and other matters. The bill would establish loan and investment limitations for a bank to hold obligations made by a person and securities issued by that same person. The bill would require the applicable minimum of specified eligible assets of a foreign (other nation) bank to be no less than 1% of the adjusted liabilities of the bank, instead of 5%. The bill would make it a crime for a subject person of a bank, as defined, as a former subject person of a bank to engage in specified acts with a licencee, as defined, if that person was issued an order of suspension or removed, and thereby would impose a state-mandated local program. The bill would require the commissioner to examine California state banks and foreign banks no less than once every 12 months, except that specified California state banks and foreign banks would be required to be examined pursuant to federal standards. The bill would make various conforming and related changes.

Existing law provides for the approval of a corporation to engage in the banking or trust business by the Commissioner of Financial Institutions. Existing

- (2) Existing law prohibits the amount of funds of a bank or trust company that are deposited in any other financial institution from exceeding 10% of the sum of the shareholders' equity allowance for loan losses, capital notes, and debentures of the depositing bank or trust company, unless the financial institution has been approved by the commissioner as a depositary for these purposes, and other conditions are met. Existing law allows the commissioner to revoke approval of a depositary or limit the amount of funds that may be deposited by a bank or trust company with any other financial institution, as specified.
- (3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would delete this prohibition and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no-yes. State-mandated local program: no-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 113 of the Financial Code is amended to 2 read:

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113. "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, *joint stock company*, limited liability company, *unincorporated association*, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

SEC. 2. Section 118 of the Financial Code is amended to read: 118. (a) All references in this division and in Division 1 (commencing with Section 100), Title 1 of the Corporations Code to financial statements, balance sheets, income statements and statements of changes in financial position of a bank and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, and similar accounting items of a bank mean such financial statements or such items prepared or determined in conformity with generally accepted accounting principles then applicable in the United States, fairly presenting in conformity with generally accepted accounting principles accepted in the United States the matters which they purport to present, subject to any specific accounting treatment required by any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, or of any regulation or order issued under this division.

(b) The commissioner may, by regulation or order, require that any financial statement or accounting item of a bank be prepared or determined in a manner other than in conformity with generally accepted accounting principles *accepted in the United States* if the commissioner finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this division.

SEC. 3. Section 218 is added to the Financial Code, to read:

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218. Notwithstanding any other provision of law, the commissioner may adopt and implement any method of accepting electronic filings of applications, reports, or other matters, which, in the opinion of the commissioner, is secure. Any method of electronic filing chosen by the commissioner shall include a method to verify the identity of the person making the filing. The verification shall be deemed to satisfy all other verifications required by this division, and shall have the same force and effect as the use of manual signatures.

SEC. 4. Section 219 is added to the Financial Code, to read: 219. (a) (1) In this section, "federal law" includes, but is not limited to, the United States Constitution, any federal statute, any federal court decision, and any regulation, circular, bulletin, interpretation, decision, order, and waiver issued by a federal agency.

- (2) The definitions set forth in Section 1700 apply to this section.
- (b) (1) Notwithstanding any other provision of law, except as provided in subdivision (c), if the commissioner finds that any provision of federal law applicable to national banking associations doing business in this state is substantively different from the provisions of this code applicable to banks organized under the laws of this state, the commissioner may by regulation make that provision of federal law applicable to banks organized under the laws of this state.
- (2) If the commissioner finds that any provision of federal law applicable to foreign (other nation) banks with respect to federal agencies or federal branches in this state is substantively different from the provisions of this code applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5 (commencing with Section 1700), the commissioner may by regulation make that provision of federal law applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5.
- (c) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (b).
- 39 (2) The commissioner shall file any regulation adopted pursuant 40 to subdivision (b), together with a citation to this section as

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authority for the adoption and a citation to the provisions of federal
 law applicable by regulation, with the Office of Administrative
 Law for filing with the Secretary of State and publication in the
 California Code of Regulations.

- (3) Any regulation adopted under subdivision (b) shall become effective on the date when it is filed with the Secretary of State unless the commissioner prescribes a later date in the regulation or in a written instrument filed with the regulation.
- (4) Any regulation adopted under subdivision (b) shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.
- (5) Any regulation adopted pursuant to subdivision (b) shall be subject to the following restrictions:
- (A) The commissioner shall not renew or reinstate the regulation adopted pursuant to subdivision (b).
- (B) The commissioner shall not adopt a new regulation pursuant to subdivision (b), to address the same conformity issue that was addressed by the regulation that expired pursuant to subdivision (c).
- (d) The commissioner may adopt regulations pursuant to subdivision (b) that are exempt from the expiration and restrictions of subdivision (c) if the regulations are adopted in compliance with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, including those listed in paragraph (1) of subdivision (c).
- SEC. 5. Section 250 of the Financial Code is amended to read: 250. The commissioner-shall have his or her principal office in the City and County of San Francisco and may-also have an office in the City of Sacramento, in the City of Los Angeles-and in, the City of San Diego, the City and County of San Francisco, or any other location in the state that he or she considers appropriate. The commissioner shall provide at the expense of the department such office space, furniture, and equipment as may be necessary or convenient for the transaction of the business of the department.
- SEC. 6. Section 277 of the Financial Code is amended to read: 277. Notwithstanding any other provision of this code or of Section 53667 of the Government Code, the commissioner may, at any time during a fiscal year, pay any expense of the department
- 40 from any of the following accounts and funds: the State Banking

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Account, the Savings and Loan Account, the Industrial Bank Account, the Financial Institutions Fund, the Credit Union Fund, and the Local Agency Deposit Security Fund. However, if the commissioner pays an expense of the department from an account or fund from which the expense is not, except for this section, permitted to be paid, the commissioner shall, as of a date within that fiscal year, reimburse the account or fund from which the

from which the expense would have been permitted to be paid. *SEC*. 7. Section 364 is added to the Financial Code, to read:

expense was paid by making a transfer from the account or fund

- 364. The commissioner may, in approving an application to organize and establish a corporation to engage in the banking or trust business pursuant to Section 362, impose any conditions the commissioner deems reasonable or necessary or advisable in the public interest.
- SEC. 8. Article 5 (commencing with Section 419) of Chapter 3 of Division 1 of the Financial Code is repealed.
- SEC. 9. Chapter 4 (commencing with Section 490) of Division 1 of the Financial Code is repealed.
- SEC. 10. Chapter 4 (commencing with Section 500) is added to Division 1 of the Financial Code, to read:

CHAPTER 4. BANK OFFICES

- 500. For purposes of this chapter the following definitions apply:
- (a) "Automated teller machine" means any electronic information processing device used by a financial institution and its customers for the primary purpose of executing transactions solely between the financial institution and its customers, if the transactions are not incidental to sales between the customer and a business entity other than a financial institution.
- (b) "Branch office" means any office at which core banking business is conducted other than an automated teller machine, a device used to facilitate check guarantee or check authorization, or a remote service facility as defined in subsection (d) of Section 345.12 of Title 12 of the Code of Federal Regulations.
- (c) "Core banking business" means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. "Core

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banking business," when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

- (d) "Facility," means an office in this state at which a bank engages in noncore banking business but at which it does not engage in core banking business.
- (e) "Head office" means the office designated by the bank as its headquarters.
- (f) "Noncore banking business" means all activities permissible for banks, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.
- (g) "Office" means the head office, any branch office, and any facility office of a bank.
- (h) "Redesignate offices" means (1) the relocation by a bank of its head office to the site of a branch or facility office in this state and the concurrent establishment by the bank of an office at the former site of the head office, or (2) the relocation by a bank of a branch office to the site of a facility office and the concurrent establishment by the bank of a branch or facility office at the former site of the branch office.
- 501. The commissioner shall issue a certificate in duplicate authorizing a bank to establish and maintain an office. A bank shall pay a fee of twenty-five dollars (\$25) for every certificate the commissioner issues pursuant to this section.
- 502. Every bank shall establish and maintain a head office which shall be located in this state.
- 503. A bank, with the approval of its board, may establish and maintain one or more offices.
- 504. A bank, with the approval of its board, may relocate an office.
- 505. A bank, with the approval of its board, may redesignate offices.
- 506. Each time a bank establishes an office, relocates an office, or redesignates an office, the bank shall, within 10 days of the establishment, relocation, or redesignation of the offices, file a notice with the commissioner. The notice shall include:
- (a) The type of office or offices to be established, relocated, or redesignated.

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(b) The complete address of the office or offices to be established, relocated, or redesignated. If an office is being relocated, the old address of the office and the address at which the office will be relocated.

- (c) The date the office or offices were established, relocated, or redesignated.
- (d) A copy of the board resolution approving the establishment, relocation, or redesignation of the office or offices.
- (e) The appropriate fee for the certificate or certificates to be issued by the commissioner.
- 507. On or before January 1 of each year, every bank shall file with the commissioner a list of all offices that are currently maintained and operated by the bank. The report shall designate the type of each office that is being maintained and operated, and the complete address of each office.
- 508. (a) A bank may close or discontinue the operation of any branch office if, before the closing or discontinuance, (1) the bank files with the commissioner a notice containing the information in subdivision (b), and (2) the commissioner within 60 days after the filing of the notice or any longer period to which the bank consents, filing of the notice or any longer period to which the bank consents, either (A) issues a written statement not objecting to the notice, or (B) does not issue a written objection to the notice.
- (b) (1) A notice filed under subdivision (a) shall contain all of the following information:
 - (A) The name of the California state bank.
- (B) The location of the branch office proposed to be closed or discontinued.
- (C) The location of the office to which the business of the branch office proposed to be closed or discontinued is proposed to be transferred.
 - (D) The proposed date of closing or discontinuance.
- (E) A detailed statement of the reasons for the decision to close the branch office.
- (F) Statistical or other information in support of the reasons consistent with the institution's written policy for branch office closings.
 - (G) Any other information that the commissioner may require.
- (2) A notice filed under subdivision (a) shall be in the form, shall be signed in the manner, and shall, if the commissioner

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requires, be verified in the manner that the commissioner may require.

- (c) For purposes of subdivision (a), a notice is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (b), is received by the commissioner.
- (d) In determining whether or not to object to a notice filed under subdivision (a), except if the commissioner finds that it is necessary in the interests of safety and soundness that the branch office be closed or discontinued, the commissioner shall consider whether the closing or discontinuance of the branch office will have a seriously adverse effect on the public convenience or advantage.
- 509. If the commissioner finds for any reason that the establishment, relocation, or redesignation of office would be unsafe or unsound for a bank, the commissioner may order the bank not to establish, relocate or redesignate offices without the prior approval of the commissioner. The order may contain any other restrictions and conditions as the commissioner deems necessary.
- 510. If a bank violates any provision of this chapter or fails to comply with any order, the commissioner may levy a penalty against the bank pursuant to Section 216.3.
- SEC. 11. Chapter 4.5 (commencing with Section 550) is added to Division 1 of the Financial Code, to read:

Chapter 4.5. Authorizations For Banks

550. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a bank or any affiliate thereof, licensed under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted

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commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

- (b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its customers, the person may be denied employment.
- (c) A request for records pursuant to this section made to the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting bank or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the person fingerprinted.
- (d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.
- (e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.
- 551. (a) Notwithstanding Section 726 of the Code of Civil Procedure or any other provision of law to the contrary, a state or nationally chartered bank, its subsidiaries or affiliates transacting business in this state, or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property, or any interest therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud

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under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.

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- (b) The provisions of this section shall not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars (\$150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.
- (c) Any action maintained under this section for damages shall not constitute a money judgment for deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.
- SEC. 12. The heading of Chapter 6 (commencing with Section 750) of Division 1 of the Financial Code is amended to read:

Chapter 6. Powers and Miscellaneous Provisions Restrictions and Prohibited Practices

SEC. 13. The heading of Article 1 (commencing with Section 750) is added to Chapter 6 of Division 1 of the Financial Code, to read:

Article 1. General

SEC. 14. Section 751.7 of the Financial Code is repealed. 751.7. A commercial bank may provide real estate appraisal

services and may charge a fee therefor.

SEC. 15. Section 752 of the Financial Code is repealed.

752. A bank or trust company may purchase, acquire, and hold not less than 75 percent of the outstanding shares of a corporation engaged exclusively in holding real property of the character described in subdivision (a) of Section 750 for the purposes therein set forth or in holding, separately or in addition to that real property, tangible personal property necessary or convenient for the use of the bank or trust company in the conduct of its business or for future expansion of its business. The purchase or acquisition of stock of any such corporation shall be approved by two-thirds of all the directors of the bank or trust company and be approved

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in writing by the commissioner. An application for approval shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars (\$500).

SEC. 16. Section 752 is added to the Financial Code, to read: 752. Any director, officer, or employee of a bank or of a foreign banking corporation who asks for or receives, or consents or agrees to receive, any commission, emolument, or gratuity or any money, property, or thing of value for his own personal benefit or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank, or the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such bank, or for permitting any person to overdraw any account with such bank, is guilty of a felony.

SEC. 17. Section 753 of the Financial Code is repealed.

753. (a) (1) In this section, "federal law" includes, but is not limited to, the United States Constitution, any federal statute, any federal court decision, and any regulation, circular, bulletin, interpretation, decision, order, and waiver issued by a federal agency.

- (2) The definitions set forth in Section 1700 apply to this section.
- (b) (1) Notwithstanding any other provision of law, except as provided in subdivision (c), if the commissioner finds that any provision of federal law applicable to national banking associations doing business in this state is substantively different from the provisions of this code applicable to banks organized under the laws of this state, the commissioner may by regulation make that provision of federal law applicable to banks organized under the laws of this state.
- (2) If the commissioner finds that any provision of federal law applicable to foreign (other nation) banks with respect to federal agencies or federal branches in this state is substantively different from the provisions of this code applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5 (commencing with Section 1700), the commissioner may by regulation make that provision of federal law applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5.

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(c) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (b).

- (2) The commissioner shall file any regulation adopted pursuant to subdivision (b), together with a citation to this section as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.
- (3) Any regulation adopted under subdivision (b) shall become effective on the date when it is filed with the Secretary of State unless the commissioner prescribes a later date in the regulation or in a written instrument filed with the regulation.
- (4) Any regulation adopted under subdivision (b) shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.
- (5) Any regulation adopted pursuant to subdivision (b) shall be subject to the following restrictions:
- (A) The commissioner shall not renew or reinstate the regulation adopted pursuant to subdivision (b).
- (B) The commissioner shall not adopt a new regulation pursuant to subdivision (b), to address the same conformity issue that was addressed by the regulation that expired pursuant to subdivision (c).
- (d) The commissioner may adopt regulations pursuant to subdivision (b) that are exempt from the expiration and restrictions of subdivision (c) if the regulations are adopted in compliance with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, including those listed in paragraph (1) of subdivision (c).
- SEC. 18. Section 753 is added to the Financial Code, to read: 753. Any director, officer, agent, or employee of any bank who knowingly receives or possesses himself or herself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof is guilty of a felony.
 - SEC. 19. Section 754 of the Financial Code is repealed.

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 754. A bank or trust company may become a member of the Federal Reserve System, may subscribe for, purchase, and hold the amounts of the capital stock of the Federal Reserve bank serving the district in which the bank or trust company is located as may be required to maintain the membership and, when not in conflict with the laws of this state, may exercise all powers conferred upon the members and may assume and discharge all obligations required of the members.

A bank or trust company may become a member of a federal home loan bank in the manner provided in the Federal Home Loan Bank Act, and, for the purpose of becoming a member, may invest any part of its shareholders' equity in the capital stock of the federal home loan bank as may be required by the provisions of the Federal Home Loan Bank Act.

SEC. 20. Section 754 is added to the Financial Code, to read: 754. Any director, officer, agent, or employee of a bank who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books willfully refuses or neglects to make any proper entry in such books as required by law, or to exhibit or allow the same to be inspected or extracts to be taken therefrom by the commissioner or his or her deputies or examiners, is guilty of a felony.

SEC. 21. Section 755 of the Financial Code is repealed.

755. A bank may become a member of the Federal Deposit Insurance Corporation or of any successor corporation having for its purpose the insurance of deposits and may do all things and assume and discharge all obligations required of such members when not in conflict with the laws of this State.

SEC. 22. Section 755 is added to the Financial Code, to read: 755. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

SEC. 23. Section 756 of the Financial Code is repealed.

756. A bank or trust company may become a member of any federal agency, membership in which is open to banking institutions, and may comply with all the requirements and conditions imposed upon such members when not in conflict with the laws of this state, except that the power conferred by this

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section shall not be exercised unless the commissioner makes a general order authorizing banks generally as a class, or trust companies generally as a class, or banks doing a commercial or trust business, respectively, as a class, to become such members upon such terms and conditions as may be prescribed in such order.

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- SEC. 24. Section 756 is added to the Financial Code, to read: 756. (a) Any person who willfully and knowingly makes, circulates, or transmits to another or others, any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank doing business in this state, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.
- *(b) The provisions of Section 216.3 shall not apply to this* 18 *section.*
 - SEC. 25. Section 758 of the Financial Code is repealed.
 - 758. With the prior written consent of the commissioner, a bank or trust company may purchase and hold not less than 75 percent of the outstanding shares of the stock of a corporation authorized to conduct a safe deposit business, organized and existing under the laws of this state and conducting a safe deposit business in the same city or locality in which an office of such bank or trust company is situated. No such safe deposit corporation shall conduct a safe deposit business in any city or locality in which such bank or trust company does not maintain an office. The aggregate investment of any bank or trust company in such corporation at any one time shall not exceed 10 percent of the shareholders' equity of such bank or trust company.
 - SEC. 26. Section 758 is added to the Financial Code, to read: 758. (a) In this section, "subject person," when used with respect to a bank, means any director or officer of the bank, any controlling person of the bank, or any director or officer of a controlling person of the bank. For purposes of this subdivision, "controlling person" has the meaning set forth in subdivision (c) of Section 700.
 - (b) No bank shall purchase any real or personal property or any interest in real or personal property, including, but not limited

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to, a leasehold, or any contract arising from the sale of real or
 personal property or any note or bond in which any subject person
 of such bank is personally or financially interested, directly or
 indirectly, for such person's own account, for such person, or as
 the partner or agent of others, without the prior approval by the
 board of directors of the bank and for not more than the current
 market value of the property purchased.

SEC. 27. Section 759 of the Financial Code is repealed.

759. With the prior written consent of the commissioner, a bank may purchase and hold the whole or any part of the stock of not more than one corporation authorized to conduct a trust business, organized and existing under the laws of this state and transacting a trust business in the same county in which the head office of such bank is situated. An application for consent shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars (\$500). No bank's investment in any such corporation at any one time shall exceed 25 percent of the bank's shareholders' equity. No such trust company shall engage in or combine the business of a commercial bank or a title insurance company.

- SEC. 28. Section 759 is added to the Financial Code, to read: 759. (a) In this section, "subject person" has the meaning set forth in subdivision (a) of Section 758.
- (b) No subject person of a bank shall purchase, directly or indirectly, or be interested in the purchase of, any of the bank's obligations or assets without the prior approval of the board of the directors of the bank and for an amount less than the then current market value. Every person violating this section shall be liable to the people of this state, for each offense, for twice the market value of the assets so purchased.
- 32 SEC. 29. Section 760 is added to the Financial Code, to read: 33 760. (a) For purposes of this section, the following terms have 34 the following meanings:
 - (1) "Carrying a security" means maintaining, reducing, or retiring indebtedness originally incurred to acquire a security.
- 37 (2) "Controlling person" has the same meaning specified in 38 Section 700.
 - (3) "Security" has the following meanings:

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(A) When used with respect to a bank, "security" has the same meaning set forth in subdivision (c) of Section 690.

- (B) When used with respect to any other person, "security" has the same meaning set forth in Section 25019 of the Corporations Code.
- (b) No bank shall acquire, hold, extend credit on the security of, or extend credit for the purpose of acquiring or carrying, any security of the bank or of any controlling person of the bank.
- (c) (1) Any bank which acquires or holds securities in violation of this section shall be liable to the people of this state for twice the market, book, or face value of the securities, whichever is greatest.
- (2) Any bank which extends credit in violation of this section shall be liable to the people of this state for twice the amount of the credit so extended.
- (d) This section does not apply to any of the following transactions:
- (1) Any acquisition or extension of credit by a bank which is necessary to reduce or prevent loss to the bank on debts previously contracted in good faith.
- (2) Any redemption by a bank of any of its redeemable shares in accordance with applicable provisions of this division and of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code.
- (3) Any acquisition by a bank of any of its shares, other than an acquisition of the type described in paragraph (1) or (2), if the acquisition is approved in advance by the commissioner.
- 28 (e) The provisions of Section 216.3 shall not apply to this 29 section.
 - SEC. 30. Section 760.1 of the Financial Code is repealed.
 - 760.1. A bank may invest in shares of the stock of one or more corporations which are engaged primarily in civic, public, or social welfare activities. The total amount invested by a bank in shares of the stock of any one such corporation shall not exceed 2 percent of the bank's shareholders' equity and the total amount invested by a bank in shares of the stock of all such corporations shall not exceed 5 percent of the bank's shareholders' equity.
 - SEC. 31. Section 761 of the Financial Code is repealed.
- 39 761. No bank shall purchase, acquire, or hold the stock of any corporation except as expressly authorized by this division, or

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pursuant to a plan of reorganization approved by the commissioner by which all of the stock of one or more banks organized under the laws of this state shall be acquired and immediately reissued proportionately to the stockholders of the acquiring bank.

SEC. 32. Section 761 is added to the Financial Code, to read: 761. Any officer, director, trustee, employee, or agent of any bank in this state, who abstracts or willfully misapplies any of the money, funds, or property of the bank, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the bank. Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for such an offense.

SEC. 33. Section 761.5 of the Financial Code is repealed. 761.5. (a) In this section:

- (1) "Depository institution" has the meaning set forth in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).
- (2) "Depository institution holding company" has the meaning set forth in Section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(w)).
- (b) Notwithstanding any provision of this code to the contrary, and except as the commissioner may otherwise order, a California state bank may purchase for its own account shares of the stock of an insured bank or of a holding company that owns or controls an insured bank if the stock of the bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies and if the bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of these institutions and companies and in providing correspondent banking services at the request of other depository institutions or their holding companies.

SEC. 34. Section 762 of the Financial Code is repealed.

762. A bank or trust company may acquire stock in settlement or reduction of a loan or in exchange for an investment previously made in good faith where the acquisition of such stock is necessary in order to minimize or avoid loss arising out of such loan or investment. Whenever any such stock can be sold for an amount sufficient to reimburse the bank or trust company for all loss arising

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out of the loan for which such stock was security or arising out of the original investment the bank or trust company shall sell the same. A bank or trust company shall not by the retention of any stock acquired pursuant to this section engage in any business not authorized by this division except to the extent necessary in the orderly liquidation of an indebtedness owing to the bank.

- SEC. 35. Section 762 is added to the Financial Code, to read: 762. (a) Every director of a bank in this state who does either of the following is guilty of a misdemeanor:
- (1) In case of the fraudulent insolvency of such bank, the director participated in the fraud.
- (2) Wilfully does any act as the director that is expressly forbidden by law or wilfully omits to perform any duty imposed by law upon him or her as the director.
- (b) The insolvency of a bank is deemed fraudulent for the purposes of this section, unless its affairs appear upon investigation to have been administered clearly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.
 - SEC. 36. Section 763 of the Financial Code is repealed.
- 763. The amount of funds of a bank or trust company which are deposited in any other financial institution (except a Federal Reserve bank) shall not at any time exceed 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the depositing bank or trust company unless the financial institution has been designated as a depositary for the funds of the depositing bank or trust company by the vote of a majority of the directors of the depositing bank or trust company, and unless the financial institution has been approved by the commissioner as a depositary for the purposes of this section. The commissioner may in his or her discretion revoke his or her approval of any such depositary and may in his or her discretion limit the amount of funds that may be deposited by any bank or trust company with any other financial institution. A deposit by one bank or trust company with another financial institution shall not be regarded as a loan.
- SEC. 37. Section 763 is added to the Financial Code, to read: 763. An officer or agent of any bank in this state, who makes or delivers any guaranty or endorsement on behalf of such bank, whereby it may become liable upon any of its discounted notes,

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bills or obligations, in a sum beyond the amount of loans and
 discounts which such bank may legally make, is guilty of a
 misdemeanor.

SEC. 38. Section 764 of the Financial Code is repealed.

764. Any court having jurisdiction of any estate in process of administration or of any other proceeding, on application of any person interested therein and after a hearing on such notice as the court may direct or without notice if all parties in interest consent thereto, may order any executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, whether such officer or trustee has qualified as such or not, to deposit with any bank or trust company any money then in his hands or under his control or which may thereafter come into his hands until the further order of the court. Upon such deposit being made and while such moneys remain on deposit with such bank or trust company, the officer or trustee making the deposit shall be relieved of all responsibility therefor, and the court by order shall reduce the bond to be given or theretofore given by such officer or trustee so as to cover only the estate remaining in his hands. The money so deposited shall be held by the bank or trust company under the direction of the court and shall be repaid only on order of the court. If the amount sought to be deposited in any one bank does not exceed the amount which will be covered by insurance of the Federal Deposit Insurance Corporation an order for deposit hereunder may be made ex parte without notice or hearing.

SEC. 39. Section 764 is added to the Financial Code, to read: 764. A director of a bank, organized under the laws of this state, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by the statutes is guilty of a misdemeanor.

SEC. 40. Section 765 of the Financial Code is repealed.

765. When the court has ordered the deposit of money or assets of an estate with a bank or trust company pursuant to Section 764 or Section 1586 of this code, any bank or trust company having possession or control of any such money or assets, upon the demand of the bank or trust company which has been ordered to receive such deposit, whether the officer or trustee directed to

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make such deposit has or has not duly qualified, shall deliver such money or assets to the bank or trust company named by the court to receive such deposit. The acceptance of such money or assets by the bank or trust company named to receive the same shall relieve the bank which has been in possession thereof from all further responsibility therefor.

SEC. 41. Section 765 is added to the Financial Code, to read: 765. Any director, trustee, officer, or employee of any bank organized under the laws of this state, who makes or maintains, or attempts to make or maintain, a deposit of such bank's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer, or employee of the corporation so making or maintaining or attempting to make or maintain such deposit is guilty of a felony.

SEC. 42. Section 766 of the Financial Code is repealed.

- 766. For the purpose of determining whether any loan or investment is secured by a first lien on real property as required by any provision of this division, none of the following shall be deemed a prior encumbrance unless any installment or payment thereunder other than a rental or royalty under a lease, is due and delinquent:
- (a) The lien of any tax, assessment, or bond levied or issued by any state or territory of the United States or by any district, political subdivision, or municipal corporation thereof, except the lien of an assessment levied against a particular parcel of real property and of any bond given or issued pursuant to law in lieu of the payment of such assessment.
- (b) A lien created by a contract and given to secure the payment for water to be furnished under such contract for the irrigation of the real property or any part thereof.
- (c) A lease of the real property under which all rents or royalties are reserved to the owner.
- (d) The lien of a bond given or issued pursuant to law in lieu of the payment of an assessment levied against a particular parcel of real property and the lien of any assessment levied to pay such bond, if the unpaid balance of such bond and the amount of such loan or investment combined do not exceed the percentage of the

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sound market value of the real property permitted to be so loaned or invested by any such provision of this division.

(e) A lien given to secure the payment of any assessment or subscription to meet the requirements of any law of the United States in respect to any irrigation project of the United States in any state or territory of the United States which may be levied, made, or received by any corporation or association formed to earry out the provisions of any such law, if the unpaid balance of such assessment or subscription and the amount of such loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any such provision of this division.

SEC. 43. Section 766 is added to the Financial Code, to read: 766. Any officer or employee of any bank organized under the laws of this state, who intentionally conceals from the directors of the bank any discounts or loans made by it between the regular meetings of its board, or the purchase of any securities or the sale of its securities during that period, or knowingly fails to report to the board when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board, is guilty of a misdemeanor.

SEC. 44. Section 767 is added to the Financial Code, to read: 767. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that the bank, or association, or banker is insolvent, is guilty of a misdemeanor.

SEC. 45. Section 768 of the Financial Code is repealed.

768. No loan made by any bank in excess of any limitations contained in this division or which is made in violation of any of the provisions of this division shall be invalid or illegal as to the lender for that reason, nor shall any loan made to any bank in excess of the amounts permitted by this division be invalid or illegal as to the lender for that reason.

SEC. 46. Section 768 is added to the Financial Code, to read: 768. Any officer, director, trustee, employee, or agent of any bank, who willfully makes a false or untrue entry in any book or record or in any report, tag, or statement of the business, affairs, or condition or in connection with any transaction of the bank, with intent to deceive any officer, director or trustee thereof, or any agent or examiner, private or official, employed or lawfully

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appointed to examine into its condition or into any of its affairs or transactions, or any public officer, office, or board to which the bank is required by law to report, or which has authority by law to examine into its affairs or transactions, or into any of its affairs or transactions, or who, with like intent, willfully omits to make a new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the bank in any book, record, report, statement, or tag of the bank, or who with like intent alters, abstracts, conceals, or destroys any book, record, report, statement, or tag of the bank made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, is guilty of a felony.

SEC. 47. Section 769 of the Financial Code is repealed.

769. A bank may purchase and hold the stock of small business investment companies authorized to operate under the Small Business Investment Act, as amended, in an amount not aggregating more than 10 percent of the bank's shareholders' equity. SEC. 48. Section 771 of the Financial Code is repealed.

771. Two or more banks may invest in the stock of a corporation engaged exclusively in the business of performing for one or more banks such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; provided that the aggregate investment of any bank in the corporation at any one time shall not exceed 10 percent of the shareholders' equity of the bank; and provided, further, that the corporation shall furnish to the commissioner satisfactory assurances that the performance of services by the corporation will be subject to regulation and examination by the commissioner to the same extent as if the services were being performed by the bank itself on its own premises.

SEC. 49. Section 772 of the Financial Code is repealed.

772. Notwithstanding the provisions of Section 1335, except as provided in Section 1336, and subject to regulations and rules the commissioner may prescribe, a bank may invest in equity or other securities of one or more corporations, limited liability companies, limited partnerships, trusts, business trusts, or other similar business organizations.

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Any reference to "corporation" in regulations adopted by the commissioner to implement this section shall be deemed to include limited liability corporations, limited liability companies, limited partnerships, trusts, business trusts, or other similar business organizations.

SEC. 50. Section 773 of the Financial Code is repealed.

773. Subject to such regulations and rules as the superintendent may prescribe, a bank may issue and sell securities which are guaranteed pursuant to Section 306(g) of the National Housing Act, as amended.

SEC. 51. Section 774 of the Financial Code is repealed.

774. Subject to such regulations and rules as the commissioner may prescribe, a bank may acquire and hold shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to Section 907(a) or 907(c) of such act.

SEC. 52. Section 775 of the Financial Code is repealed.

775. Notwithstanding any other provision of law, any commercial bank (as defined in Section 105) and any trust company (as defined in Section 107) holding securities in a fiduciary capacity or while engaged in a trust business (as defined in Section 106), or while acting in any capacity under a court or private trust, or while acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit of such securities in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006. When such securities are so deposited, they may be held in the custody of the securities depository in which they are deposited or in the custody of any other securities depository so licensed or exempted and in which the securities depository in which such securities were deposited maintains an account, or in the custody of any bank or trust company with authority to accept custody of such securities, which accepts custody of such securities on behalf of a securities depository. Such securities may be held in the name of the nominee of the securities depository in which they are deposited, or in the name of the nominee of any other securities depository with which the securities depository in which -25- AB 1301

they are deposited maintains an account. The custodian of securities so deposited may merge certificates representing securities of the same class of the same issuer and may hold such certificates in bulk with any other securities deposited in any securities depository by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. Any commercial bank or trust company which deposits or arranges for the deposit of such securities in such a securities depository shall maintain records which at all times show the ownership of the securities so deposited. A commercial bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue.

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This section shall apply to securities now held or hereafter held by a commercial bank or trust company in the above designated capacities. A commercial bank or trust company may but shall not be required to own capital stock of a securities depository in which it deposits securities pursuant to this section.

SEC. 53. Section 775.1 of the Financial Code is repealed.

775.1. Notwithstanding any other provision of law, any commercial bank (as defined in Section 105) and any trust company (as defined in Section 107) holding securities in a fiduciary capacity or while engaged in a trust business (as defined in Section 106), or while acting in any capacity under a court or private trust, or while acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit with a federal reserve bank of any such securities the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of such federal reserve bank in the name of such commercial bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. Any commercial bank or trust company which deposits or arranges for the deposit of such securities pursuant to this section shall maintain records which at all times show the ownership of the securities so deposited. A commercial bank or **AB 1301 — 26 —**

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1 trust company so depositing securities pursuant to this section shall 2 be subject to such rules and regulations as in the case of 3 state-chartered institutions, the commissioner and, in the case of 4 national banking associations, the Comptroller of the Currency, 5 may from time to time issue. Ownership of, and other interests in, the securities credited to such account may be transferred by entries 6 7 on the books of said federal reserve bank without physical delivery 8 of any securities. A commercial bank or trust company acting as 9 custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by such 10 commercial bank or trust company pursuant to this section for the 11 account of the fiduciary. A fiduciary shall, on demand by any party 12 13 to its accounting, certify in writing to such party the securities deposited for its account as such fiduciary pursuant to this section. 14 15 This section shall apply to all fiduciaries and custodians for fiduciaries, acting on the effective date of this section or who 16 17 thereafter may act regardless of the state of the instrument or court order by which they are appointed. 18 19

SEC. 54. Section 776 of the Financial Code is repealed.

776. (a) Every bank and branch shall conduct all of its business in one building or in adjoining buildings except that under special circumstances a bank or branch may conduct a portion of its business at an extension office elsewhere in the same vicinity provided the notice requirements of subdivision (b) are complied with and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

- (b) The California state bank shall file a notice with the commissioner no fewer than 30 days prior to conducting any portion of its business at an extension office, which notice shall provide the following information:
- (1) The name of the California state bank, and, if applicable, the popular name of the branch whose business will be conducted at an extension office.
 - (2) The address of the proposed extension office.
- (3) A description of the proposed business to be conducted at
- (4) The date on which the bank proposes to commence business at the extension.

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(5) Any other information that the commissioner may, by regulation or order, require.

SEC. 55. Section 777 of the Financial Code is repealed.

777. A commercial bank may provide management consulting advice and services and may charge a fee therefor.

SEC. 56. Section 777.5 of the Financial Code is repealed.

777.5. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a bank or any affiliate thereof, licensed under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

- (b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its eustomers, the person may be denied employment.
- (c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting bank or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the person fingerprinted.

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(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.

SEC. 57. Section 778 of the Financial Code is repealed.

- 778. (a) A commercial bank may provide electronic data-processing services and may charge a fee therefor.
- (b) As used in this section, "electronic data-processing" means the process that encompasses all computerized and auxiliary automated information handling, including systems analysis and design, conversion of data, computer programming, information storage and retrieval, data transmission, requisite system controls, simulation, and all the related operator-machine interaction.

SEC. 58. Section 779 of the Financial Code is repealed.

- 779. (a) Notwithstanding Section 726 of the Code of Civil Procedure or any other provision of law to the contrary, a state or nationally chartered bank, its subsidiaries or affiliates transacting business in this state, or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property, or any interest therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.
- (b) The provisions of this section shall not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars (\$150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.
- (e) Any action maintained under this section for damages shall not constitute a money judgment for deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.

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SEC. 59. Article 2 (commencing with Section 780) is added to Chapter 6 of Division 1 of the Financial Code, to read:

Article 2. Loans to Insiders

- 780. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in Regulation O (12 C.F.R. Part 215) of the Federal Reserve Board, conform, and be interpreted by anyone construing the provisions of this article to so conform, to Regulation O, to any rule or interpretation promulgated thereunder by the Board of Governors of the Federal Reserve System, and to any interpretation issued by an official or employee of the Federal Reserve System duly authorized to issue the interpretation.
 - 781. As used in this article:
 - (a) "Bank" means:
- (1) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.
- (2) Any foreign (other nation) bank that is licensed by the commissioner under Article 3 (commencing with Section 1750) of Chapter 13.5 to maintain a depositary agency or branch office, as defined in Section 1700, in this state, with respect to any office of that type.
- (3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.
- (4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.
- (5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).
- (b) "Company" has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.
- (c) "Executive officer" has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O. Also, "executive officer," when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the

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manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) that the bank maintains in this state.

- (d) "Extension of credit" has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term "member bank," as used in Section 215.3, means a bank.
- (e) "Regulation O" means Regulation O (Part 215 (commencing with Section 215.1) of Title 12 of the Code of Federal Regulations) of the Board of Governors of the Federal Reserve System.
- (f) "Subsidiary" has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term "bank holding company," as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term "board," as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.
- 782. Sections 215.2, 215.3, 215.4, 215.5, 215.8, and 215.9 of Regulation O in all of their particulars, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted, subject to the following:
- (a) The term "this subpart," as used in the referenced sections of Regulation O, means this article.
- (b) Subdivision (j) of Section 215.2 of Regulation O is not applicable. Instead, the term "member bank," as used in the referenced sections of Regulation O, means a bank.
- (c) The term "executive officer," as used in the referenced sections of Regulation O, includes, in the case of a bank of the type described in paragraph (2) or (4) of subdivision (a) of Section 781, the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) of Section 781 that the bank maintains in this state.
- (d) The definition of "lending limit" in subdivision (i) of Section 215.2 of Regulation O is not applicable; instead, the term "lending limit" as used in the referenced sections of Regulation O means an amount equal to the limit on obligations of a single obligor set forth in Section 1221, and any reference in the referenced sections of Regulation O to the lending limit specified in subdivision (i) of Section 215.2 is considered to be a reference to the limit specified in Section 1221.

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(e) (1) Any company which is majority owned by one or more executive officers or directors of a bank, individually or collectively, is deemed to be a related interest of each of those executive officers or directors for purposes of the referenced sections of Regulation O.

- (2) In case an individual who is an executive officer of a bank is also a director or executive officer of a company, the company is deemed to be a related interest of the individual for purposes of the referenced sections of Regulation O except subdivision (c) of Section 215.4. However, this paragraph shall not apply to an extension of credit by a bank to any of the following companies:
 - (A) A bank holding company of which the bank is a subsidiary.
 - (B) Any subsidiary of the bank holding company.

(C) Any nonprofit company engaged in religious, charitable, educational, scientific, literary, social, or recreational purposes.

The exemption set forth in subparagraphs (A), (B), and (C) shall only apply if the individual whose position as a director or executive officer of the company at issue does not receive compensation in excess of one thousand dollars (\$1,000) per year for serving as a director or executive officer of the company.

- (3) In case a bank in making an extension of credit becomes subject to the requirements set forth in subdivision (b)(1)(i) of Section 215.4 of Regulation O because of paragraph (1) or (2), the bank shall be deemed to fulfill the requirement if the extension of credit is promptly reported to the board of the bank.
- 784. No bank shall extend credit in an aggregate amount greater than the amount permitted in paragraph (4) of subdivision (c) of Section 215.5 of Regulation O to any company that is majority owned by one or more executive officers of the bank, individually or collectively. For purposes of paragraph (4) of subdivision (c) of Section 215.5 of Regulation O, the total amount of credit extended by the bank to the company is considered to be extended to each of those executive officers.
- 785. No provision of this article or of Article 2 (commencing with Section 1220) of Chapter 10 shall apply to an advance of money made by a bank pursuant to Section 317 of the Corporations Code.
- 786. A bank may make a loan, otherwise complying with the provisions of this division, for the benefit of a trust, notwithstanding

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that the bank or any one or more executive officers or directors of the bank are trustees of the trust.

787. Any bank that makes an extension of credit in violation of this article is subject to a civil penalty pursuant to Section 216.3. Any person, other than the bank making the extension of credit, who knowingly makes or procures an extension of credit in violation of this article is guilty of a felony.

SEC. 60. Section 782 of the Financial Code is repealed.

782. Notwithstanding Section 1335, a bank may invest in shares of an investment company (1) registered with the Securities and Exchange Commission pursuant to the federal Investment Company Act of 1940, as amended (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933, as amended (15 U.S.C. Sec. 77a et seq.), and (2) the portfolio of which consists solely of the following:

- (a) Debt obligations in which a bank is permitted to invest without limitation pursuant to subdivision (a), (b), (c), or (d) of Section 1336 and repurchase agreements fully collateralized by those obligations.
- (b) Loans of federal funds and similar loans of unsecured day(s) funds, maturing in six months or less to institutions insured by the Federal Deposit Insurance Corporation [Federal Funds]. Loans under this subdivision are limited to transactions described in subsection (a) or (b) of Section 32.102 of Title 12 of the Code of Federal Regulations involving investment companies in which the entire beneficial interest is held exclusively by depository institutions, as permitted by Section 204.123 of Title 12 of the Code of Federal Regulations.

The commissioner may, by regulation, prescribe further conditions respecting investment by banks under this section as may be necessary for the safety or soundness of banks or as may otherwise be in the public interest.

SEC. 61. Article 3 (commencing with Section 790) is added to Chapter 3 of Division 1 of the Financial Code, to read:

Article 3. Banking Business by Unauthorized Persons

790. No person who has not received a certificate from the commissioner authorizing it to engage in the banking business shall solicit or receive deposits, issue certificates of deposit with

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or without provision for interest, make payments on check, or transact business in the way or manner of a bank or trust company.

791. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall advertise that it is accepting deposits, and issuing notes or certificates therefore, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that the place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business is transacted, nor shall any person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that the business is the business of a bank or trust company, or transact business in a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this division.

792. No person who has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title that contains the word "bank" or "banker" or "banking" or "industrial bank" or "industrial loan company" or "investment and loan" or "savings bank" or "thrift and loan" or "trust" or "trustee" or "trust company" or act or advertise in any manner that indicates that the business is the business of a bank or trust company. Any building and loan association or savings association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, "This is a building and loan association" or "This is a savings association" or words to that effect.

793. No provision of Section 790, 791, or 792 prohibits any of the following from transacting any business or performing any activity if it is authorized by applicable law to transact the business or perform the activity and is not prohibited by any applicable law, other than Sections 790, 791, and 792, from transacting the business or performing the activity:

- (a) Any California state commercial bank, industrial bank, or trust company.
- (b) Any national bank.

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(c) Any insured foreign (other state) state bank.

- (d) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility, as defined in Section 3800, in this state.
- (e) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state.
- (f) Any foreign (other nation) bank that maintains a federal agency, as defined in subdivision (g) of Section 1700, or federal branch, as defined in subdivision (h) of Section 1700, in this state.
- (g) Any California state corporation that is incorporated for the purpose of engaging in, and that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.
- (h) Any corporation incorporated under Section 25A of the Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).
- (i) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19.
- (j) Any industrial bank that is organized under the laws of another state of the United States and is insured by the Federal Deposit Insurance Corporation.
- 794. Any person or any bank violating any provision of the foregoing sections of this article shall be liable to the people of the state in the amount of one hundred dollars (\$100) per day or part thereof during which that violation continues.
- 795. No person shall represent by advertisement, circular, or otherwise, or in any manner mislead anyone to believe, that any securities are legal investments for savings banks in this state or conform to the requirements of law relating to such investments, unless those securities are in fact at that time legal investments for such banks or do in fact so conform. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

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SEC. 62. Article 1.5 (commencing with Section 1210) is added to Chapter 10 of Division 1 of the Financial Code, to read:

Article 1.5. Loan and Investment Limitations

- 1210. (a) "Affiliate" when used with respect to a specified person, means any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries.
 - (b) "Control" has the meaning set forth in Section 700.
- (c) "Regulated corporation" means any corporation in which a bank makes an equity investment and which the bank controls.
- (d) "Securities issued by a person" means any debt, equity, or other security issued by a person, and any and all affiliates of that person, issued for the benefit of that person or for the benefit of an affiliate of that person.
- 1211. (a) Subject to the limitations in Sections 1221 and 1330, a bank may hold both obligations made by a person, and securities issued by that same person.
- (b) The total amount of obligations and securities held by a bank pursuant to subdivision (a) shall not exceed 25 percent of the sum of the shareholders' equity, allowance for loan and lease losses, capital notes and debentures of the bank.
- 1212. The limitations in subdivision (b) of Section 1211 and Section 1330 shall not apply to investments by banks in securities of regulated corporations.
- 1213. Sections 1211 and 1330 shall not apply to investments held by a bank prior to the operative date of this section. All authorizations regarding investments by a bank issued by the commissioner prior to the operative date of this section are terminated.
- SEC. 63. Section 1232 of the Financial Code is amended to read:
- 1232. A commercial bank shall not make a loan upon the capital stock of any other bank unless such bank has been in existence at least two years and has earned and paid a dividend on its capital stock, nor, without the written approval of the commissioner, shall it make a loan on the security of the capital stock of another bank if by the making of such loan the capital stock of such other bank

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owned or held as collateral by the lending bank will exceed in the aggregate 25 percent of the stock of such other bank.

SEC. 64. Section 1239 is added to the Financial Code, to read: 1239. For the purpose of determining whether any loan or investment is secured by a first lien on real property as required by any provision of this division, none of the following shall be deemed a prior encumbrance unless any installment or payment thereunder, other than a rental or royalty under a lease, is due and delinquent:

- (a) The lien of any tax, assessment, or bond levied or issued by any state or territory of the United States or by any district, political subdivision, or municipal corporation thereof, except the lien of an assessment levied against a particular parcel of real property and of any bond given or issued pursuant to law in lieu of the payment of the assessment.
- (b) A lien created by a contract and given to secure the payment for water to be furnished under the contract for the irrigation of the real property or any part thereof.
- (c) A lease of the real property under which all rents or royalties are reserved to the owner.
- (d) The lien of a bond given or issued pursuant to law in lieu of the payment of an assessment levied against a particular parcel of real property and the lien of any assessment levied to pay that bond, if the unpaid balance of the bond and the amount of the loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any provision of this division.
- (e) A lien given to secure the payment of any assessment or subscription to meet the requirements of any law of the United States in respect to any irrigation project of the United States in any state or territory of the United States which may be levied, made, or received by any corporation or association formed to carry out the provisions of that law, if the unpaid balance of the assessment or subscription and the amount of the loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any provision of this division.
- SEC. 65. Section 1240 is added to the Financial Code, to read: 1240. No loan made by any bank in excess of any limitations contained in this division or which is made in violation of any of

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the provisions of this division shall be invalid or illegal as to the lender for that reason, nor shall any loan made to any bank in excess of the amounts permitted by this division be invalid or illegal as to the lender for that reason.

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- SEC. 66. Section 1330 is added to Article 4 of Chapter 10 of Division 1 of the Financial Code, to read:
- 1330. The total amount invested by a bank in the securities issued by a person shall not exceed 15 percent of the sum of the shareholders' equity, allowance for loan and lease losses, capital notes and debentures of the bank, except:
- (a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks, or federal intermediate credit banks established under the Federal Farm Loan Act; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.
- (c) Obligations of the State of California and those for which
 the credit of the State of California is pledged for the payment of
 principal and interest.
 (d) Obligations of a local agency or district of the State of
 - (d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district.
 - (e) Capital stock of the Federal Reserve Bank serving the district in which the bank is located.

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1 (f) Capital stock of a federal home loan bank in the manner 2 provided in the Federal Home Loan Bank Act.

- 3 (g) Capital stock of the Federal Deposit Insurance Corporation. 4 SEC. 67. Section 1331 is added to Article 4 of Chapter 10 of 5 Division 1 of the Financial Code, to read:
 - 1331. Section 1330 shall not apply to investments made pursuant to this section. A bank may invest in shares of an investment company (1) registered with the Securities and Exchange Commission pursuant to the federal Investment Company Act of 1940, (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933 (15 U.S.C. Sec. 77a et seq.), and (2) the portfolio of which consists solely of the following:
 - (a) Debt obligations in which a bank is permitted to invest without limitation pursuant to subdivision (a), (b), (c), or (d) of Section 1330 and repurchase agreements fully collateralized by those obligations.
 - (b) Loans of federal funds and similar loans of unsecured day(s) funds, maturing in six months or less to institutions insured by the Federal Deposit Insurance Corporation Federal Funds. Loans under this subdivision are limited to transactions described in subsection (a) or (b) of Section 32.102 of Title 12 of the Code of Federal Regulations involving investment companies in which the entire beneficial interest is held exclusively by depository institutions, as permitted by Section 204.123 of Title 12 of the Code of Federal Regulations.
 - (c) Cash or its equivalent.
 - SEC. 68. Section 1332 is added to Article 4 of Chapter 10 of Division 1 of the Financial Code, to read:
 - 1332. Notwithstanding Section 1330, a bank may purchase, acquire, or hold the stock of any corporation pursuant to a plan of reorganization approved by the commissioner by which all of the stock of one or more banks organized under the laws of this state shall be acquired and immediately reissured proportionately to the stockholders of the acquiring bank
 - SEC. 69. Section 1335 of the Financial Code is repealed.
- 36 37 1335. (a) A commercial bank may invest in gold and silver 38 bullion and United States mint certificates of ascertained value, 39 and purchase securities, except corporation shares, for its own

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account which in the informed opinion of the bank it is prudent to invest the funds of its depositors.

- (b) Notwithstanding the provisions of subdivision (a), a commercial bank may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks, except to the extent that any provision of law requires directors' qualifying shares, and if such bank is engaged exclusively in providing services for other banks and their officers, directors, or employees.
 - SEC. 70. Section 1336 of the Financial Code is repealed.
- 1336. Unless otherwise approved by the commissioner, a commercial bank shall not invest an amount exceeding 15 percent of its shareholders' equity in the securities of any one obligor or maker, except:
- (a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks or federal intermediate eredit banks established under the Federal Farm Loan Act, as amended; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.
- (c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.
- (d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon

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all property within its boundaries subject to taxation by the local 2 agency or district.

SEC. 71. Section 1592 is added to the Financial Code, to read: 1592. Notwithstanding any other provision of law, any bank and any trust company holding securities in a fiduciary capacity or while engaged in a trust business, or while acting in any capacity under a court or private trust, or while acting in that capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating the trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit of the securities in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006. When securities are so deposited, they may be held in the custody of the securities depository in which they are deposited or in the custody of any other securities depository so licensed or exempted and in which the securities depository in which the securities were deposited maintains an account, or in the custody of any bank or trust company with authority to accept custody of the securities, that accepts custody of the securities on behalf of a securities depository. The securities may be held in the name of the nominee of the securities depository in which they are deposited, or in the name of the nominee of any other securities depository with which the securities depository in which they are deposited maintains an account. The custodian of securities so deposited may merge certificates representing securities of the same class of the same issuer and may hold those certificates in bulk with any other securities deposited in any securities depository by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. Any bank or trust company that deposits or arranges for the deposit of the securities in a securities depository shall maintain records that at all times show the ownership of the deposited securities. A bank or trust company depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. This section shall apply to securities now held or hereafter held by a bank or trust company in the above designated -41- AB 1301

capacities. A bank or trust company may, but shall not be required to, own capital stock of a securities depository in which it deposits securities pursuant to this section.

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SEC. 72. Section 1593 is added to the Financial Code, to read: 1593. Notwithstanding any other provision of law, any bank and any trust company holding securities in a fiduciary capacity or while engaged in a trust business, or while acting in any capacity under a court or private trust, or while acting in that capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating the trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit with a federal reserve bank of any such securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. Any bank or trust company that deposits or arranges for the deposit of securities pursuant to this section shall maintain records that at all times show the ownership of the securities deposited. A bank or trust company depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company pursuant to this section for the account of the fiduciary. A fiduciary shall, on demand by any party to its accounting, certify in writing to that party the securities deposited for its account as a fiduciary pursuant to this section. This section shall apply to all fiduciaries and custodians for fiduciaries, acting on the effective date of this section or who thereafter may act regardless of the state of the instrument or court order by which they are appointed.

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1 SEC. 73. Section 1761 of the Financial Code is amended to 2 read:

1761. (a) In this section:

- (1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (C) such other liabilities as the commissioner may by regulation or order exclude.
- (2) "Applicable minimum," when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign (other nation) bank, means such amount as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in the case of a foreign (other nation) bank which is licensed to maintain a branch office, the applicable minimum shall in no event be less than-5 *I* percent of the adjusted liabilities of such bank.
- (3) "Approved depository," when used with respect to a foreign (other nation) bank, means a bank organized under the laws of this state or a national bank headquartered in this state which has been selected by such foreign (other nation) bank and approved by the commissioner for the purpose of acting as the approved depository of the foreign (other nation) bank and which has filed with the commissioner, in such form as the commissioner may by regulation or order prescribe, an agreement to comply with all applicable provisions of this section and of any regulation or order issued under this section.
- (4) "Eligible assets" when used with respect to a foreign (other nation) bank, means any of the following:
 - (A) Cash.
 - (B) Any security of the type described in Section 1542.
- (C) Any negotiable certificate of deposit which (i) has a maturity of not more than one year, (ii) is payable in the United States, and (iii) is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign (other nation) bank which is located in the United States.

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(D) Any commercial paper which is payable in the United States and which is rated P-1 or its equivalent by a nationally recognized rating service; provided, however, that any conflict in rating shall be resolved in favor of the lower rating.

- (E) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve bank.
- (F) Any other asset which the commissioner by regulation or order determines to be eligible.

Notwithstanding the foregoing provisions of this paragraph, "eligible asset," when used with respect to a foreign (other nation) bank, does not include any instrument the issuer of which (i) is, or is affiliated with, such foreign (other nation) bank, (ii) is domiciled in, or controlled by a bank or other person domiciled in, the same foreign nation as the foreign (other nation) bank, or (iii) is, or is controlled by, such foreign nation. For purposes of the foregoing provision, to be "affiliated" means to control, to be controlled by, or to be under common control with; and to "control" has the meaning set forth in subdivision (b) of Section 700.

- (b) For purposes of this section:
- (1) The amount of adjusted liabilities of a foreign (other nation) bank's business in this state shall be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.
- (2) Any eligible asset shall be valued at the lesser of market or par.
- (c) (1) Before any foreign (other nation) bank is licensed to transact business in this state, such bank shall deposit, and each foreign (other nation) bank which is licensed to transact business in this state shall maintain on deposit, with an approved depository eligible assets having a value in an amount not less than the applicable minimum.
- (2) Whenever a foreign (other nation) bank which is licensed to transact business in this state ceases to be so licensed, such bank shall thereafter maintain on deposit with an approved depository eligible assets having a value in an amount not less than the applicable minimum for such period of time as the commissioner may determine to be necessary for the protection of creditors of the bank's business in this state or for the protection of the public interest.

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(d) (1) No foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall withdraw any such eligible assets except with the prior approval of the commissioner.

- (2) No approved depository which holds eligible assets on deposit from a foreign (other nation) bank pursuant to this section shall release any such eligible assets except with the prior approval of the commissioner or as otherwise provided in subdivision (h).
- (e) Any foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall, unless the commissioner shall have suspended or revoked its license to transact business in this state or taken possession of its property and business in this state, be entitled to receive any income paid on such eligible assets.
- (f) (1) Whenever a foreign (other nation) bank deposits eligible assets with, or withdraws eligible assets from, an approved depository pursuant to this section, such bank shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe.
- (2) Whenever an approved depository receives, holds, or releases eligible assets pursuant to this section, such approved depository shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe and shall file with the commissioner such reports as and when the commissioner may by regulation or order require.
- (g) Whenever a foreign (other nation) bank maintains eligible assets on deposit with an approved depository pursuant to this section:
- (1) The eligible assets shall be deemed to be pledged to the commissioner for the benefit of the creditors of the bank's business in this state; and, notwithstanding any provision of the Uniform Commercial Code to the contrary, the commissioner, for the benefit of such creditors, shall be deemed to have a security interest in such eligible assets.
- (2) The eligible assets shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the bank.
- (h) (1) In case the commissioner takes possession of the property and business of a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository

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pursuant to this section, such approved depository shall, upon order of the commissioner, release such eligible assets to the commissioner, as liquidator of the property and business of such bank.

- (2) In case a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section fails to pay any judgment creditor of its business in this state and the commissioner has not taken possession of the property and business of such bank, such approved depository shall release such eligible assets to the commissioner, and the commissioner shall make such disposition of the eligible assets, as a court of competent jurisdiction of this state or of the United States may order for the benefit of such judgment creditor. For purposes of this paragraph, "judgment creditor of its business in this state" means a person to whom the bank is required to pay money under a judgment which (A) arose out of the bank's business in this state, (B) has been entered by a court of this state or of the United States, (C) has become final, in that all possibility of direct attack on such judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted, and (D) has remained unpaid for a period of not less than 60 days after becoming final.
- SEC. 74. Section 1900 of the Financial Code is amended to read:
- 1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner section, "foreign bank" means the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5.
- (2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

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(3) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

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- (4) The commissioner shall cause every California state bank, every California state trust company, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 and every foreign bank to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less frequently than once every two calendar years. 12 months, and the following banks shall be examined at the same frequency except pursuant to the applicable standards under federal law:
- (A) California state banks that meet the criteria set forth in Section 1820(d)(4) of Title 12 of the United States Code.
- (B) Foreign banks that meet the criteria set forth in Section 211.26(c)(2) of Title 12 of the Code of Federal Regulations.
- (5) The examinations required by paragraph (4) may be conducted in alternate examination periods, as appropriate, if the commissioner determines that an examination of the state bank by the appropriate federal regulator, insuring or guaranteeing corporation during the intervening examination period carries out the purpose of this section. The commissioner may not accept two consecutive examinations, or two consecutive examination reports, made by federal regulators, insuring or guaranteeing corporations, or agencies with respect to the condition of the state bank.
- (6) The commissioner shall cause every California state trust company to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less frequently than once every 24 months.
- (7) The commissioner may examine subsidiaries of every California state bank, state trust company, and foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to the extent and whenever and as often as the commissioner shall deem it advisable.
- 36 (b) The commissioner may at any time examine any of the 37 following:
 - (1) Any office of a bank organized under the laws of this state.
 - (2) Any office of a foreign (other state) bank that maintains an office in this state.

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(3) Any office of a foreign (other nation) bank that maintains an office in this state.

- (c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.
- SEC. 75. Section 1911.5 is added to the Financial Code, to read:
- 1911.5. In Sections 1912 and 1913, "holding company" shall have the meaning set forth in Section 3700.
- SEC. 76. Section 1912 of the Financial Code is amended to read:
- 1912. If it appears to the commissioner that a bank, trust company, or foreign banking corporation, or any holding company or subsidiary of the bank, trust company, or foreign banking corporation, is violating or failing to comply with its articles or with any applicable law, the commissioner may direct the bank, trust company, or foreign banking corporation to comply with its articles or with the law by an order issued over his or her official seal, or if it appears to the commissioner that any bank, trust company, or foreign banking corporation is conducting its business in an unsafe or injurious manner the commissioner may in like manner direct it to discontinue the unsafe or injurious practices. The order shall require the bank, trust company, or foreign banking corporation, or any holding company or subsidiary of the bank, trust company, or foreign banking corporation, to show cause before the commissioner at a time and place to be fixed by him or her why the order should not be observed.
- SEC. 77. Section 1913 of the Financial Code is amended to read:
- 1913. If upon any hearing held pursuant to Section 1912 it appears to the commissioner that the bank, trust company, or foreign banking corporation, or any holding company or subsidiary of the bank, trust company, or foreign banking corporation, is violating or failing to comply with its articles or with any applicable law or is conducting its business in an unsafe or injurious manner the commissioner may make a final order directing it to comply with its articles or with the law or to discontinue the unsafe or injurious practices. Unless within 10

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days after the issuance of the final order its enforcement is restrained in a proceeding brought by the bank, trust company, or foreign banking corporation, or any holding company or subsidiary of the bank, trust company, or foreign banking corporation, it shall forthwith comply with the order.

- SEC. 78. Section 1913.5 of the Financial Code is amended to read:
- 1913.5. (a) For the purposes of this section, the following definitions are applicable:
- (1) "Account holder" includes, in the case of a deposit account, the depositor; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position that is similar to the position that a trustor or beneficiary occupies with respect to a trust account.
 - (2) "Bank" means the following:
- (A) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.
- (B) Any foreign (other state) state bank that maintains a branch office in this state, with respect to the branch office and any other office in this state.
- (C) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state, with respect to that office.
- (D) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state, with respect to that office.
- (E) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.
- (F) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19, with respect to that office.
- (3) "Licensee" means any bank, savings association, credit union, transmitter of money abroad, issuer of payment instruments, issuer of traveler's checks, insurance premium finance agency, or

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business and industrial development corporation that is authorized
by the commissioner to conduct business in this state.

(3)

(4) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including, without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4)

(5) "Subject person of a bank" means any director, officer, or employee of the bank, or any person who participates in the conduct of the business of the bank. However, "subject person of a bank" does not include a controlling person of the bank that is registered as a bank holding company with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. Sections 1841, et seq.). "Subject person of a bank" does not include an individual who is a director, officer, or employee of a controlling person of the bank unless the individual is a director, officer, or employee of the bank or participates in the conduct of the business of the bank. For purposes of this paragraph, "controlling person" has the meaning set forth in Section 700.

(5)

- (6) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation.
- (b) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank—and or prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:
- (1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the bank; or
- (B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the bank; or

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(C) That the subject person has committed or engaged in any act that constitutes a breach of his or her fiduciary duty as a subject person; and

- (2) (A) That the bank has suffered or will probably suffer substantial financial loss or other damage by reason of the violation, act, or breach of fiduciary duty; or
- (B) That the interests of the bank's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or
- (C) That the subject person has received financial gain by reason of the violation, act, or breach of fiduciary duty; and
- (3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one that demonstrates a willful or continuing disregard for the safety or soundness of the bank.
- (c) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank—and *or* prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:
- (1) That the subject person's conduct or practice with respect to another bank or business institution has resulted in substantial financial loss or other damage; and
- (2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other bank or business institution; and
- (3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the bank.
- (d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank—and or prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:
- (1) That it is necessary for the protection of the bank or the interests of the bank's accountholders that the commissioner issue the order immediately; and
- (2) (A) That any of the factors set forth in paragraph (1) of subdivision (b), any of the factors set forth in paragraph (2) of

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subdivision (b), and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or

- (B) That any of the factors set forth in paragraph (1) of subdivision (c), any of the factors set forth in paragraph (2) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.
- (e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank—and or prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:
- (A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and
- (B) That the person's continuing to serve as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank. In case the criminal proceedings are terminated other than by a judgment of conviction, the order shall be deemed rescinded.
- (2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank, or a former subject person of a bank, from his or her office, if any, with the bank and prohibiting the person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:
- (A) That the person has been finally convicted of a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and
- (B) That the person's continuing to serve or resumption of service as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank.
- (3) The fact that any subject person of a bank charged with a crime involving dishonesty or breach of trust is not finally

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convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

- (f) (1) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period to which the person consents, the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.
- (2) The right of any person to whom an order is issued under subdivision (d) or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner for a hearing on the order pursuant to this subdivision.
- (g) (1) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a bank, comply with all applicable provisions of this division and of any regulation or order issued thereunder.
- (2) The right of any person to whom an order is issued under subdivision (b), (c), (d), or (e) to petition for judicial review of that order shall not be affected by the failure of the person to apply to the commissioner pursuant to paragraph (1) to modify or rescind the order.
- (h) (1) A notice issued under this section shall state the facts constituting the grounds for removal, suspension, or prohibition.
- (2) A hearing held before the commissioner pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the view of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

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(i) (1) It is unlawful for any subject person of a bank or former subject person of a bank to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

- (A) To serve or act as a director, officer, employee, or agent of any bank licensee.
- (B) To vote any shares or other securities of a bank licensee having voting rights, for the election of any person as a director of the bank licensee.
- (C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any-bank licensee having voting rights.
- (D) Otherwise to participate in any manner in the conduct of the business of any-bank *licensee*.
- (2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both that fine and imprisonment.
- (3) If, after notice and a hearing, the commissioner finds that any person has violated paragraph (1), the commissioner may order that person to pay to the commissioner a civil penalty in an amount as the commissioner may specify, provided that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues.

In determining the amount of a civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and other factors that in the opinion of the commissioner may be relevant.

- SEC. 79. Chapter 18 (commencing with Section 3350) of Division 1 of the Financial Code is repealed.
- 37 SEC. 80. Section 3516 of the Financial Code is amended to 38 read:
- 39 3516. No corporation shall deposit any of its funds with any other moneyed corporation unless-such *the* other corporation has

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been nominated and designated as such a depositary as provided 1 2 by Section 763. for the funds of the depositing corporation by the 3 vote of a majority of the directors of the depositing corporation 4 and has been approved by the commissioner as a depositary. The 5 commissioner may in his or her discretion revoke his or her approval of any such depositary. This limitation shall not apply 6 7 to the deposit of funds by such a corporation with another moneyed 8 corporation, which that owns all or a majority of the capital stock 9 of such the corporation.

SEC. 81. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

SECTION 1. Section 763 of the Financial Code is repealed.

SEC. 2. Section 3516 of the Financial Code is amended to read: 3516. No corporation shall deposit any of its funds with any other moneyed corporation unless the other corporation has been nominated and designated as a depositary for the funds of the depositing corporation by the vote of a majority of the directors of the depositing corporation and has been approved by the commissioner as a depositary. The commissioner may in his or her discretion revoke his or her approval of any such depositary. This limitation shall not apply to the deposit of funds by a corporation with another moneyed corporation that owns all or a majority of the capital stock of the corporation.